

DECISION



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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-199698

DATE: March 2, 1981

MATTER OF: Hugh M. Chally - [Claim for retroactive temporary promotion and backpay]

DIGEST: Employee classified as a GS-11 claims retroactive temporary promotion and backpay for performing the duties of an Electronics Mechanic, General Foreman WS-14/15, from 1973 to 1978 for which he was not paid. Claim is denied where foreman position in question was not in existence during period of the claim.

This decision is in response to the (appeal of) Mr. Hugh M. Chally of our Claims Division settlement dated April 25, 1980 (Z-2821198). Mr. Chally's claim is based on our Turner-Caldwell decisions 55 Comp. Gen. 539 (1975), affirmed at 56 id. 427 (1977). Those decisions hold that if an employee is detailed to a position classified at a higher grade for a period in excess of 120 days without prior Civil Service Commission (now Office of Personnel Management) approval, he or she is entitled to a retroactive temporary promotion and backpay for such period provided all qualifications and other requirements for such promotion are met. See paragraph 8C, Federal Personnel Manual (FPM) Bulletin No. 300-40, May 25, 1977.

[This decision deals only with that portion of the claim which accrued after January 24, 1974, since Mr. Chally did not question the Claims Division's determination that the earlier portion of his claim is barred by the applicable 6-year statute of limitations found in section 71a of title 31, United States Code.

Mr. Chally contends that he is entitled to a temporary promotion and backpay within the meaning of Turner-Caldwell based upon a disposition form dated July 6, 1973, signed by the Chief, Depot Shops Division, assigning him the responsibilities of supervisor in charge of all swing shift operations and personnel. This disposition form was addressed to

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all maintenance swing shift personnel. Mr. Chally points out that at least four previous swing shift foreman handled the swing shift responsibilities while being assigned the job description for electronic foreman for units I and II of the Maintenance Electronics Division during the period of September 1966 through October 1970. The record also indicates that the swing shift position was abolished effective July 1971, although, as Mr. Chally notes, the electronic units foreman positions have been continued. Further, the record also indicates that during the period prior to the abolishment of the position, the position descriptions for a foreman specifically incorporated the duties or responsibilities of the swing shift position, for a period of 4 months a year. However, that specific requirement is not contained in the current foreman position descriptions.

Effective August 20, 1978, Mr. Chally was promoted to job number 10647, electronics mechanic general foreman, WS-14. The record also reveals a statement by Mr. Chally's supervisor stating that Mr. Chally performed the full scope of the duties enumerated in this job description beginning June 30, 1973, and continuing through the period of the backpay claim. However, although the record indicates that Mr. Chally's predecessors to the swing shift responsibilities did eventually receive grades of WS-14 and WS-15, the grade changes occurred when the individuals were no longer associated with the swing shift. The record is devoid of any indication that anyone received a WS-14 or WS-15 grade or brought such a grade with them while assigned swing shift responsibilities prior to Mr. Chally. Further, the WS-14, and WS-15 position descriptions differ in many respects from the position occupied by Mr. Chally as to major duties and number of employees supervised.

Mr. Chally's claim was denied by the Army and subsequently by our Claims Division. Both disallowances were predicated on the fact that there was no established classified position to which Mr. Chally could have been detailed during the period covered by his claim.

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As a general rule, an employee is entitled only to the salary of the position to which he is officially appointed regardless of the duties he performed. We have recognized a limited exception where an employee has been detailed to a higher-grade position for an extended period without Civil Service Commission (now Office of Personnel Management) approval. Turner-Caldwell, supra. One of the requirements for recovery of backpay under Turner-Caldwell is that the detail must have been to an established position, classified under an occupational standard to a wage or pay level. See paragraph 4, FPM Bulletin No. 300-40, May 25, 1977. Accordingly, an employee is not entitled to a retroactive temporary promotion for performing duties of a higher-level position which had been abolished and re-established at a higher level only after reclassification subsequent to the alleged period of the detail. David J. Banyas, B-196995, November 6, 1980; Kenneth J. Wood, B-198059, May 19, 1980. The record indicates that the WS-15 position to which Mr. Chally based his detail did not contain any of the responsibilities for swing shift foreman, the position in which Mr. Chally actually functioned. The swing shift foreman position was graded at WS-13 prior to its termination in July 1971, prior to the time Mr. Chally assumed its responsibilities. The swing shift foreman position was not re-established until July 1978 when it was reclassified up to WS-14. Therefore, there was no swing shift foreman position in the Depot Shops Division to which Mr. Chally could be retroactively promoted during the period of his claim.

Accordingly, Mr. Chally has failed to prove that there was an established higher grade position in existence during the period of the claim and he is, therefore, not entitled to relief under Turner-Caldwell. We sustain the Claims Division's action in denying Mr. Chally's claim.

Milton J. Forster

For the Comptroller General
of the United States